

TRUE COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLATSOP

MATTHEW SOPIWNICK,

Plaintiff,

v.

INVACARE CORPORATION, an Ohio  
corporation, and PACIFIC COAST MEDICAL  
SUPPLY, INC., an Oregon corporation,

Defendants.

Case No. 12-2373

**COMPLAINT – PRODUCT  
LIABILITY/BODILY INJURY CASE**

**NOT SUBJECT TO MANDATORY  
ARBITRATION**

**Prayer Amount: \$461,274.61  
Fee Authority: ORS 21.160(1)(c)**

Plaintiff alleges:

1.

Defendant Invacare Corporation (“Invacare”) is a corporation with its principal place of business in Ohio. Invacare is one of the world’s leading manufacturers of mobility assistance products, including the Invacare four wheel silver flame walker.

2.

Defendant Pacific Coast Medical Supply, Inc. (“Pacific Coast Medical Supply”) is an Oregon corporation with its principal place of business in Astoria, Oregon. Pacific Coast Medical Supply is an authorized Invacare products retailer. It sells and distributes Invacare mobility products and accessories, including Invacare’s four wheel silver flame walker.

3.

On or about March 12, 2011, plaintiff purchased from Pacific Coast Medical Supply a new four wheel silver flame walker (“walker”) manufactured by Invacare.

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1 4.

2 On or about April 25, 2011, plaintiff was using the walker for the purpose intended, and  
3 without it being modified or in any way altered, when, without warning, it collapsed. At the time,  
4 plaintiff was near a flight of steps, and when the walker collapsed, he went head over heels down  
5 the flight of stairs, landing on his head and shoulder.

6 5.

7 As a direct and proximate result of the walker collapsing and plaintiff falling head over heels  
8 down a flight of stairs, he received injuries, including a torn right rotator cuff, injuries to his left  
9 shoulder, his knees and to his hip and back. Plaintiff's injuries are permanent. They have caused  
10 him pain and suffering and an interference with his usual and normal activities, all to his non-  
11 economic damages in the amount of \$300,000.00.

12 6.

13 As a further direct and proximate result of the failure of the walker, plaintiff has necessarily  
14 and reasonably incurred medical and related expenses in the amount of \$11,274.61 and a loss of  
15 income in the amount of \$100,000.00.

16 **FIRST CLAIM FOR RELIEF**

17 **(Strict Products Liability)**

18 7.

19 Defendants are a manufacturer, distributor, seller and/or lessor of a product within the  
20 meaning of ORS 30.900 *et seq.*

21 8.

22 Defendants delivered a product that ultimately reached the consumer, plaintiff, in the normal  
23 flow of commerce, and without any significant change in the product from the time it left  
24 defendant's control until the time of its failure and injury to plaintiff.

25 9.

26 Defendants defectively designed, manufactured, tested, inspected, and otherwise created,

1 sold and delivered a product that failed, thereby causing the bodily injury and other losses, in ways  
2 including, but not limited to, the following:

3 a. In manufacturing the walker with defective welds, incapable of supporting the  
4 weight of consumers, such as plaintiff, who used it;

5 b. Designing the walker in such a way that it was incapable of supporting consumers,  
6 such as plaintiff, who used it; and

7 c. Failing to adequately test the walker in accordance with federal regulations and/or  
8 industry standards, including the welds of the walker, so as to identify and correct product defects  
9 with the potential of injuring consumers, such as plaintiff.

10 **SECOND CLAIM FOR RELIEF**

11 **(Negligence)**

12 10.

13 Defendants were negligent in failing to adequately design, inspect, test, manufacture,  
14 instruct or warn, repair, and/or otherwise properly and safely develop, deliver and maintain the  
15 walker.

16 **THIRD CLAIM FOR RELIEF**

17 **(Breach of Express Warranty)**

18 11.

19 Defendants are merchants of a product within the meaning of ORS 72.1040 *et seq.*

20 Defendants breached an express warranty to the consumer, plaintiff, when they created,  
21 sold, and delivered the walker, thereby causing the bodily injury and other losses described herein.

22 **FOURTH CLAIM FOR RELIEF**

23 **(Breach of Implied Warranty of Merchantability)**

24 12.

25 Defendants are merchants of a product within the meaning of ORS 72.1040 *et seq.*

26 Defendants breached the implied warranty of merchantability to the consumer, plaintiff,

1 when they created, sold and delivered the walker, thereby causing the bodily injuries and other  
2 losses described herein.

3 WHEREFORE, plaintiff prays for judgment against defendant, and each of them, as  
4 follows:

- 5 a. For economic damages in the amount of \$111,274.61;  
6 b. For non-economic damages in the amount of \$300,000.00; and  
7 c. For costs and disbursements incurred herein.

8  
9 Dated this 6<sup>th</sup> day of August, 2012.

10 LINDSAY, HART, NEIL & WEIGLER, LLP

11  
12 By: 

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Attorneys for Plaintiff

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15 Trial Attorney: Glen McClendon  
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